



Memorandum

TO: HONORABLE MAYOR AND
COUNCIL

FROM: Harry Freitas

SUBJECT: SEE BELOW

DATE: October 6, 2014

Approved

Date

10/15/14

COUNCIL DISTRICT: 8

SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING DIRECTOR'S APPROVAL OF TWO PLANNED DEVELOPMENT PERMIT AMENDMENTS FOR GRADING MODIFICATIONS TO THE CHABOYA RANCH PROJECT AND AN APPEAL OF THE USE OF AN ADDENDUM TO THE RICHMOND RANCH FINAL ENVIRONMENTAL IMPACT REPORT (FILE NO. PDC91-081) AND MITIGATED NEGATIVE DECLARATION FOR CHABOYA RANCH (FILE NO. PDC11-021).

RECOMMENDATION

- (a) Conduct an Administrative Hearing on and consider an Appeal of the Planning Director's use of the Addendum to the Richmond Ranch Environmental Impact Report (EIR), File No. PDC91-081, and the Chaboya Ranch Mitigated Negative Declaration (MND), File No. PDC11-021, as the environmental clearance for the Director's approval of Planned Development Permit Amendments PDA94-021-01 (Richmond Ranch) and PDA13-008-01 (Chaboya Ranch), which revise the grading plan for the Chaboya Ranch project on a project site located east of San Felipe Road and west of Livery Lane, approximately 650 feet southerly of Running Springs Road.
- (b) Adopt a resolution upholding the Planning Director's use of the Addendum, adopting the Mitigation Monitoring and Reporting Program (MMRP) and finding that:
 - (1) the City Council has read and considered the Addendum to the Richmond Ranch EIR and Chaboya Ranch MND prepared in connection with Planned Development Permit Amendments PDA94-021-01 and PDA13-008-01, as well as the EIR and MND;
 - (2) the Addendum, together with the EIR and MND, has been prepared and completed in compliance with the California Environmental Quality Act (CEQA) of 1970, together with state and local implementation guidelines;

- (3) that the Addendum, together with the EIR and MND, reflects the independent judgment and analysis of the City of San José;
 - (4) preparation of a subsequent or supplemental EIR is not required because no new environmental impacts have been identified and no new mitigation measures are required; and
 - (5) the Director of Planning shall transmit copies of the EIR, MND and Addendum to any other decision-making body of the City of San José for the project.
- (c) Conduct an Administrative Hearing and consider an Appeal of the Planning Director's decision to approve the Planned Development Permit Amendments for the Chaboya Ranch grading modifications (File Nos. PDA94-021-01 and PDA13-008-01), and consider adoption of a resolution approving these Planned Development Permit Amendments.

OUTCOME

Denial of the environmental appeal and approval of the Addendum will allow the City Council to consider the appeal of the Planned Development Permit Amendments (PD Permit Amendments). If approval of the PD Permit Amendments is upheld, the applicant will be able to implement the modified grading plan for the Chaboya Ranch project. Upholding the environmental appeal would void the approved Planned Development Amendments and would require the preparation of a new environmental document prior to re-hearing the project.

EXECUTIVE SUMMARY

The Planned Development Permit Amendments PDA94-021-01 and PDA13-008-01 propose to: (i) revise the previously approved grading plans for the Chaboya Ranch project so the grading better conforms to the natural landscape and (ii) reduce the number and height of retaining walls on the Chaboya Ranch site. The changes include an increase in the area of site disturbance resulting from construction of the Chaboya Ranch project from about 3.03 acres to 4.3 acres, which includes the expansion of grading onto an adjacent undeveloped property to the northwest of the original Chaboya Ranch project site (APN 660-58-002), as well as changes to grading within the 100 foot riparian corridor setback on the Chaboya Ranch site. An Initial Study and Addendum to the Richmond Ranch Environmental Impact Report (Richmond Ranch EIR) and the Chaboya Ranch Mitigated Negative Declaration (Chaboya Ranch MND) was prepared for the proposed grading modifications.

The Santa Clara Valley Audubon Society (the environmental appellant) claims that the City conducted inadequate environmental analysis to support the adoption of an Addendum for the proposed grading modifications to the Chaboya Ranch project. Specifically, the appellant alleges the analysis is deficient because: i) the site of the previously approved Chaboya Ranch project and proposed grading modifications is designated as private open space in the

Environmental Impact Report prepared for the Richmond Ranch project to mitigate aesthetic impacts, and ii) the separate review of the proposed grading modifications is a segmentation of CEQA analysis for the Chaboya Ranch project.

Staff considers the Addendum to provide adequate CEQA review for the proposed grading modifications because: i) extensive grading was anticipated in both previous environmental documents, including on lands proposed for open space; ii) the grading modifications will not increase the severity of previously identified impacts; iii) the review of grading modifications does not constitute segmentation of CEQA review because the modifications were not anticipated at the time the Chaboya Ranch project was approved; and iv) the grading modification will blend with the natural terrain to the maximum extent possible, and with the exception of the Chaboya Ranch project site, the site will remain open space after grading is completed.

Seventeen neighbors (the permit appellants) submitted a joint appeal of the two Planned Development Permit Amendments for the Chaboya Ranch grading modifications. Staff recommends that the City Council approve the Planned Development Permit Amendments for the Chaboya Ranch grading modifications.

BACKGROUND

Proposed Project

On February 28, 2014, Tim Lewis Communities (the applicant) submitted applications for two Planned Development Permit Amendments to alter the grading for the Chaboya Ranch project. The proposed grading modifications will conform better to the natural terrain of the site and allow a reduction in the number and size of retaining walls. These modifications include the expansion of grading activity from the Chaboya Ranch site (for illustrative purposes, Parcel A in Figure 1, below) to an adjacent 5.1 acre parcel to the north/northwest, APN 660-58-002 (for illustrative purposes, Parcel B in Figure 1, below). Parcel B is designated as "private open space" in the Richmond Ranch Planned Development Zoning. Parcel B was not part of the original Chaboya Ranch project site, and the new grading on this site is covered under an amendment to one of the two Planned Development Permits that effectuated the Richmond Ranch Planned Development Zoning (File No. PD94-021). Both PD Permit Amendments were reviewed and approved as one project.

Previously Approved Projects – Richmond Ranch and Chaboya Ranch

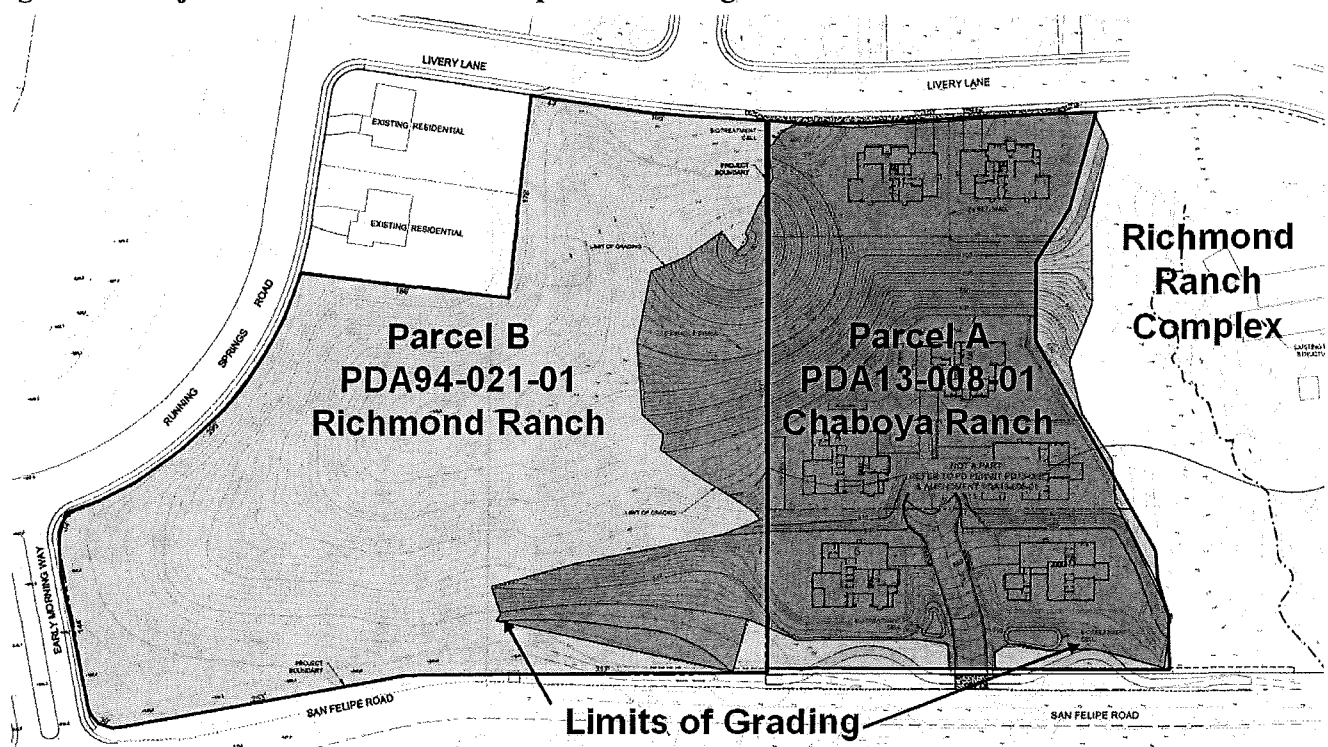
Richmond Ranch

The Richmond Ranch Planned Development Zoning (Richmond Ranch PD Zoning) re-zoned the project site from "A" Agriculture to "A(PD)" Planned Development Zoning, and was approved in December 1992 under File No. PDC91-081. The zoning allowed the development of 260

single-family houses on a 196 gross acre site, which included Parcel A (the future Chaboya Ranch project site) and Parcel B (the property to the north of the Chaboya Ranch project site), as shown above. The Richmond Ranch EIR included as a mitigation measure a requirement that 85 acres of the project site be maintained as open space. This open space included all of Parcels A and B, the site of the current grading amendments.

Two Planned Development Permits, PD94-021 and PD95-062, approved by the Planning Director on October 14, 1994 and October 2, 1995, respectively, effectuated the PD Zoning. PD94-021 implemented the first phase of the Richmond Ranch project (renamed California Oak Creek), and designated the area of Parcels A and B as private open space on the approved plans. PD95-062 implemented the second phase of the Richmond Ranch project. Both Planned Development Permits included extensive grading in areas designated private open space in order to facilitate the creation of house plats, private yards, roadways, and drainage systems.

Figure 1: Project Site and Limits of Proposed Grading



Chaboya Ranch

In 2013, the Chaboya Ranch project rezoned 7.48 acres of land that was designated as private open space in the original Richmond Ranch PD Zoning to a new Planned Development Zoning (File No. PDC11-021) to allow the construction of seven (7) single-family homes. The City Council adopted a Mitigated Negative Declaration and approved the rezoning on February 26,

2013. The Chaboya Ranch Planned Development Zoning (Chaboya Ranch PD Zoning) was effectuated by Planned Development Permit PD13-008 (the Chaboya Ranch PD Permit), which the Planning Director approved on April 29, 2013 at a noticed Public Hearing.

As discussed above, the Chaboya Ranch site was part of the 85 acres of private open space included as mitigation in the Richmond Ranch PD Zoning and EIR. Yet this open space designation was not reflected in the Future San José 2020 General Plan Land Use/Transportation Diagram (2020 General Plan Land Use Diagram), which designated the Chaboya Ranch site Very Low Density Residential, allowing residential development at a density of up to two dwelling units per acre.

During the Envision San José 2040 General Plan update process, lands designated as private open space in the Richmond Ranch PD Zoning were re-designated Open Space, Parkland, and Habitat on the General Plan Land Use/Transportation Diagram. However, per Policy IP-1.9 of the Envision San José 2040 General Plan, Planned Development Zonings (such as the Chaboya Ranch PD Zoning) could use the 2020 General Plan Land Use Diagram designation because the project was submitted prior to adoption of the Envision San José 2040 General Plan and the project was approved within 18 months following adoption.

Staff evaluated the Chaboya Ranch PD Zoning for consistency with the 2020 General Plan Land Use Diagram designation of Very Low Density Residential. The private open space designation under the Richmond Ranch PD Zoning was not considered by staff. Additionally, the development standards and the mitigation measures from the Richmond Ranch PD Zoning were not considered because these standards were to be replaced by new development standards with the rezoning.

Changes in Grading Compared to the Previous Projects

The conceptual grading plans for the Chaboya Ranch PD Permit resulted in 3.03 acres of site disturbance. The proposed amendments, with the expansion of grading activity to Parcel B, would increase the area of grading to about 4.3 acres. Grading associated with the previously approved projects and the current amendments is shown in the following table and discussed below:

Table 1: Comparison of Previously Approved Grading and Proposed Grading

	Area of Disturbance	Grading (cut/fill) (cubic yards)	Area of Grading Within 100 foot Riparian Setback
Richmond Ranch – PDC91-081 <i>Note: Covers both project sites</i>	119 acres	1.7 million (1,000,000/700,000)	--
Chaboya Ranch – PDC11-021	3.03 acres	34,000 (30,000/ 4,000)	7,660 sq. ft.
Proposed PD Amendments			
- Chaboya Ranch Site – Parcel A	About 3 acres	32,000 (25,000/ 7,000)	5,266 sq. ft.
- Adjacent Site – Parcel B	About 1.3 acres	50,400 (47,200/3,200)	--
Total both sites:	4.3 acres	82,400 (72,200/10,200)	5,266 sq. ft.

Grading on Parcel B: The grading expansion onto Parcel B would allow for grading that more closely follows the natural topography than the previously approved grading plan because it reduces the number and height of retaining walls on the Chaboya Ranch site and allows for grading contours mimic the existing topography. This grading includes about 47,200 cubic yards of cut and 3,200 cubic yards of fill on Parcel B.

Changes to grading within the 100 foot riparian setback: The previous grading plan for Chaboya Ranch included 7,660 square feet of grading within the 100 foot riparian setback from a stream tributary to the south and east of the project site. The revised grading plan proposes to reduce the area of disturbance within this riparian setback to 5,266 square feet but will shift most grading activity upstream. A Habitat Enhancement, Mitigation, and Monitoring Plan (HEMMP) to restore disturbed habitat within the riparian setback was required as a mitigation measure of the Chaboya Ranch MND previously adopted by the City Council. The HEMMP is included as an attachment to the Addendum document and continued compliance with the HEMMP is a requirement of the mitigation monitoring and reporting program (MMRP) adopted with the permit amendments.

Environmental Review

The environmental review of the project used two previously approved environmental review documents: the original Richmond Ranch EIR certified by the City Council on December 15, 1992 (Resolution No. 64286) and the Chaboya Ranch MND certified by the City Council on February 26, 2013 (Resolution No. 76567). Both environmental documents were used because the Chaboya Ranch MND only provides environmental clearance for the Chaboya Ranch project site (Parcel A and the adjacent Richmond Ranch Complex), and did not evaluate environmental impacts on Parcel B. The Richmond Ranch EIR analyzed environmental impacts on a 196 acre site which included Parcel B (as well as Parcel A, the Chaboya Ranch site) as private open space. The Addendum prepared for the PD Permit Amendments determined that the proposed grading modifications would not result in new significant environmental impacts nor increase the severity of previously identified environmental impacts.

Richmond Ranch EIR

The Richmond Ranch EIR analyzed the environmental impacts of the entire 196 acre Richmond Ranch development, which included the future Chaboya Ranch site and Parcel B, the adjacent open space parcel. This EIR evaluated impacts related to biological resources, cultural resources, noise, air quality, traffic, aesthetics, and open space, as well as cumulative impacts of the project in combination with other nearby developments (such as Silver Creek and the Meadowlands). The EIR determined that the Richmond Ranch project would result in significant and unavoidable impacts to aesthetics and open space due to the introduction of a "relatively dense urban development into a predominately rural area."

To reduce the aesthetic impacts of the project, the design of the Richmond Ranch project incorporated 85 acres of open space as mitigation. This open space included areas adjacent to creeks, areas above the 15% slope line, pockets of private open space within the development, Parcel A (the Chaboya Ranch site), and Parcel B. Among the open space lands, only the areas adjacent to the creeks served as mitigation for biological resources, with the remaining open space intended primarily as mitigation for aesthetic impacts. To further reduce aesthetic impacts, the Richmond Ranch PD Zoning proposed contour grading to "blend graded areas into the natural terrain." The Richmond Ranch EIR determined that even with the open space dedication and contour grading, the aesthetic impacts of the project would be "significant and unavoidable" due to the conversion of the site from a rural to suburban character.

The Richmond Ranch EIR evaluated the biological impacts of the project and identified areas of sensitive habitat on the site. The EIR identified both Parcels A and B as non-native grassland, a habitat type that was not considered sensitive due to "...grazing, the abundance of non-native grasslands in the County, and the prevalence of grassland species in the vicinity." The EIR also found that "(g)radating for the proposed project would result in the loss of most of the non-native grassland habitat on the site."

Chaboya Ranch MND

An Initial Study and a Mitigated Negative Declaration (MND) was adopted for the Chaboya Ranch Planned Development Zoning by City Council in February 2013. This MND analyzed the environmental impacts of the Chaboya Ranch project on Parcel A and the Richmond Ranch Complex site, but did not include Parcel B. The MND identified significant impacts related to biological resources (particularly potential impacts to burrowing owls, nesting raptors, and riparian habitat) and cultural resources, all of which were reduced to a less than significant level with mitigation measures. The MND determined that aesthetic impacts of the project would be less than significant since development on the project site would be required to comply with the City's Residential Design Guidelines and the City's Outdoor Lighting Policy.

Appeal of Environmental Determination and Permits

Environmental Appeal

A timely appeal of the Planning Director's adoption of the Addendum was filed on August 20, 2014 by the Santa Clara Valley Audubon Society (the environmental appellant). Per Section 21.04.140 of Title 21 of the San José Municipal Code, an appeal of an environmental clearance determination must be heard by the City Council.

Upon conclusion of the environmental appeal hearing, the City Council may find that the Addendum has been completed in compliance with the requirements of CEQA, that on the basis of the whole record there is no substantial evidence that the project with mitigation will have a significant effect on the environment, and that the Addendum reflects the City's independent

judgment and analysis. If the Council makes such a finding and certification, it shall uphold the Planning Director's adoption of the Addendum.

If the City Council finds that the project may have a significant effect on the environment, the City Council shall require either a new Mitigated Negative Declaration or a new Environmental Impact Report prior to any consideration of whether the project should be approved. The approval of the Planned Development Permit Amendments by the Planning Director will be nullified, and a new decision shall be made after the new environmental document is prepared and certified by the City Council.

Appeal of the Permit

In addition to the appeal of the environmental determination, a timely appeal of the Planning Director's approval of both Planned Development Permits was filed on August 25, 2014 by seventeen neighbors (the permit appellants): Lynn and Kevin Tso, Kathleen Helsing, George Holmes, Michael and Bonnie Mace, Cathryn and Richard Kast, Jazmine Jung, Polina and Max Spivak, Jisu and Lipika Bhattacharya, Marie Sinatra, Betty Wu, and Rima Ravi. If the City Council finds the Addendum to be adequate, the Council can choose to uphold the approval of the Planned Development Permit Amendments by the Planning Director, approve the Permits with modifications to the Permit conditions, or deny the Permits.

ANALYSIS

This section addresses the following: 1) staff responses to specific comments raised by the environmental appellant; 2) staff responses to specific comments raised by the permit appellants; 3) project conformance with the Envision San José 2040 General Plan; and 4) project conformance with the approved Planned Development Zonings and to the applicable provisions of the City of San José Zoning Ordinance.

Environmental Appeal

The analysis below summarizes the alleged deficiencies with the environmental document asserted by the environmental appellant and provides City staff's responses demonstrating that the Addendum satisfies the requirements of CEQA.

1. Comment: Utilization of mitigation open space.

The project proposes to remove all the topsoil from the grading area. This is a significant, adverse and permanent impact to the biological value of the open space well into the future, and is likely to render restoration efforts infeasible. In addition, the hill is expected to change its shape. Without detailed visual aids, it is impossible for us to know whether the EIR mitigation measure that would "blend graded areas into the natural terrain" would be implemented.

The Richmond Ranch EIR set aside 85 acres of private open space as mitigation for Significant and Unavoidable impacts. The Chaboya Project and Grading Addendum are within the lands identified in the EIR as private open space. The proposed grading plan does not use contour grading as called for in the EIR to reduce visual and aesthetic impacts.

Response: This comment actually refers to three distinct issues: i) biological impacts resulting from the loss of topsoil; ii) the use of contour grading to reduce visual impacts; and iii) the development of the Chaboya Ranch project and subsequent expansion of grading on lands designated private open space as mitigation to reduce aesthetic impacts in the Richmond Ranch EIR.

- i) Biological impacts from the loss of topsoil: The environmental appellant claims that the grading and the removal of topsoil on Parcel B will be a “significant, adverse, and permanent impact to the biological value of the open space.” However, as mentioned in the Richmond Ranch EIR, the project site is designated non-native grassland and is therefore not considered sensitive habitat due to previous grazing and the prevalence of non-native grassland in the vicinity. The Richmond Ranch EIR also mentions that grading would result in a loss of most of the non-native grassland on the site, and topsoil on a portion of Parcel B was already removed as part of the grading for the roadways and housing lots. Removal of topsoil during grading activities does not conflict with the Richmond Ranch EIR. As a condition of approval for the grading permit, the applicant will be required to re-vegetate the hillsides after grading, and can elect to use topsoil that exists on the project site.
- ii) Grading and aesthetic impacts: The environmental appellant claims that the Chaboya Ranch grading modification does not use contour grading as required by the Richmond Ranch EIR. The proposed grading on Parcel B blends with natural contours of the site as intended by the Richmond Ranch EIR. Although the total amount of grading will increase compared to the conceptual grading plan in the approved Chaboya Ranch PD Permit, the expansion of grading onto Parcel B will result in grading that more closely conforms to the terrain of the site and reduces the number and height of retaining walls on the Chaboya Ranch site.
- iii) Development and grading on lands designated as open space: Both the Chaboya Ranch project site and the adjacent Parcel B are located within lands designated as private open space in the Richmond Ranch EIR and PD Zoning for the purpose of mitigating aesthetic impacts.

When staff prepared the MND for the Chaboya Ranch project in 2013, staff did not review the Richmond Ranch EIR because the MND was a new environmental document that did not rely on or tier off of the Richmond Ranch EIR; and thus staff overlooked the Richmond Ranch PD Zoning’s designation of the site as private open space for mitigation purposes. Similarly, development standards and the mitigation measures from the Richmond Ranch PD Zoning were also not considered because they were to be superseded by the Chaboya Ranch PD Zoning.

Several factors likely contributed to staff's oversight in reviewing the Chaboya Ranch project: i) no open space easement was recorded on the Chaboya Ranch site; ii) the General Plan Land Use designation that applied to the project allowed low density residential development; and iii) the re-zoning process allowed the Chaboya Ranch PD Zoning to supersede the development standards and mitigation measures from the Richmond Ranch PD Zoning.

Lessons learned are that an oversight can be avoided in the future by requiring new re-zonings with designated open space to include at least one of the following development standards:

- a) A recordation of open space easements for land designated as open space for mitigation purposes;
- b) the re-zoning of open space lands to "OS Open Space;" or
- c) a requirement that a General Plan Amendment be submitted to change mitigation open space lands to the Open Space, Parkland, and Habitat on the General Plan Land Use/Transportation Diagram.

The current project is for proposed grading modifications to the Chaboya Ranch development, including the expansion of grading onto Parcel B. This grading is consistent with the activities envisioned in the previously approved environmental documents, as the Richmond Ranch EIR anticipated significant grading activities on lands designated as private open space. As described above, the Richmond Ranch EIR required grading to blend with the natural topography to reduce visual impacts, which were still deemed to be significant and unavoidable. Extensive grading has already occurred on Parcel B during the construction of roadways and building lots associated with the Richmond Ranch development.

2. Comment: Segmentation of CEQA Review.

According to Staff, grading of the hill beyond the footprint of the approved Chaboya Ranch is needed to mitigate visual degradation that results from the Chaboya Ranch project as approved in a 2013 Mitigated Negative Declaration (MND) that found no significant and unavoidable impacts of the Chaboya Ranch project on environmental resources. We find this sequence of project approval inadequate, as it is a de-facto segmentation of CEQA review, with the Chaboya Ranch and the Chaboya Ranch Grading Amendment projects are analyzed incrementally by parts to make the environmental impacts appear smaller than would be had "the whole of the action" been analyzed, as required by CEQA. We ask for new analysis of visual impacts, and geotechnical analysis for the entire project (Chaboya Ranch plus Grading Amendment).

Response: The Addendum is not a segmentation of CEQA review because the proposed grading modifications, including the expansion of grading activities onto Parcel B, was not envisioned as part of the project when the Chaboya Ranch MND was adopted in February 2013. To be considered segmentation, an active application for grading modifications would have had to be on file at the time the Chaboya Ranch MND was approved. Otherwise, any assessment of potential impacts at that time would have been speculative. Changes to previously approved

projects are common and, like the current proposal, may require additional environmental review to determine that the analysis and conclusions of the approved environmental document still apply. This is not segmentation of CEQA review.

The Chaboya Ranch MND never identified a significant impact to aesthetics resulting from the development and associated grading. Therefore, no mitigation measures were required. The current PD Permit Amendments include an increase in the amount of grading associated with the Chaboya Ranch project, but allow for grading that more closely follows the natural terrain of the site. The Addendum did consider the visual impacts of the whole of the project and concluded that the additional grading would not change the conclusions of the previously approved Chaboya Ranch MND or the Richmond Ranch EIR.

A revised Geotechnical report, reviewed and approved by the City's Geologist, was prepared to reflect the revised grading plans. Subsequently, a new Geologic Hazard Clearance was issued by the City Geologist for the whole Chaboya Ranch project which reflects the revised grading and house lot locations.

3. *Comment: CEQA Procedure.*

Neither Addendum or Chaboya MND = provide adequate analyses.

- *The Initial Study "should explain why the identified mitigation measures will render the project's contribution "less than cumulatively considerable." Per CEQA Guidelines, §15064, subd. (h)(2).*
- *"a project's contribution incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements that will avoid or a substantially lessen the cumulative problem...within the geographic area in which the project is located."*
- *Under CEQA section 21083, under the Guidelines section 15355 definition of cumulative impacts "the need of an EIR turns on the impacts of BOTH the project under review and the relevant past, present, and future projects.*
- *The City documents (MND and Addendum) did not adequately or explicit acknowledge the Richmond Ranch EIR used these parcels to reduce some of the Significant Unavoidable impacts to open space. In the court case :*
 - *Gentry v. City of Murrieta (4th Dist. 1995) 36 Cal. App. 4th 1359 [43 Cal. Rptr. 2d 170].*
 - *The court stated that lack of evidence in the record (in the initial study) to support the conclusion that the project would have no cumulative effects supported a fair argument that the project would have wildlife effects.*

Response: The environmental appellant claims that the Addendum and the approved Chaboya Ranch MND did not provide adequate analysis of cumulative impacts to open space (and aesthetics). As discussed above, the Chaboya Ranch MND is an approved document and is not

the subject of the current appeal. In terms of the adequacy of the Addendum, the appellant does not provide any specifics about how the analysis in the Initial Study supporting the Addendum is lacking.

The environmental appellant appears to be confusing an analysis of cumulative impacts with the analysis of the project plus background conditions. Cumulative impacts consider the impacts of the project in combination with existing, approved, and proposed projects in the vicinity. An analysis of background plus project conditions considers the impact of the project in combination with previously approved projects, namely the Richmond Ranch and Chaboya Ranch projects. Since there are no foreseeable projects in the vicinity of the project site beyond the Chaboya Ranch project, the latter analysis is appropriate.

As discussed in the Initial Study, the analysis supporting the Addendum did consider the proposed grading amendments in relation to the previously approved projects as required under Sections 15162(a) and 15164 of the CEQA Guidelines. Specifically, the analysis in the Addendum concluded that:

- The grading modification does not represent a substantial change to the previously approved Chaboya Ranch MND and Richmond Ranch EIR as no new significant environmental impacts were identified and the project would not result in a substantial increase in previously identified environmental impacts. The area of grading on Parcel B will be re-vegetated after completion of grading activities and will remain private open space as originally envisioned in the Richmond Ranch EIR, and grading modifications on Parcel A will improve the aesthetics of the project by reducing the number and size of retaining walls associated with the Chaboya Ranch development.
- No substantial changes have occurred with regard to the circumstances under which the project was approved, which require major revisions to the Chaboya Ranch MND or Richmond Ranch EIR. No new development is proposed beyond that approved in the original environmental documents and the grading on Parcel B will not alter the use of the site as private open space.
- No new information of substantial importance has been provided which demonstrates that the project will have one or more new significant effects not discussed in the Richmond Ranch EIR and Chaboya Ranch MND. As discussed in the Richmond Ranch EIR, significant grading was anticipated on lands designated as private open space, and the proposed grading will blend with the natural contours of the site.
- The grading modification will not increase the severity of a previously-identified significant impact. Significant grading was anticipated on lands designated as private open space in the Richmond Ranch EIR and the scale of the proposed grading modifications will not result in an increase in the severity of aesthetic impacts since the grading will blend with the natural contours of the site.
- No mitigation measures or alternatives that were previously found unfeasible are now feasible.

For these reasons, and the lack of any substantial evidence submitted by the environmental appellant, an Addendum to the previously approved Richmond Ranch EIR and Chaboya Ranch

MND is appropriate. Finally, the Addendum did discuss the designation of the Chaboya Ranch site and Parcel B as private open space in the Richmond Ranch EIR. Parcel B will remain private open space after completion of the grading.

4. Comment: The Planning Director's approvals violate the California Environmental Quality Act because:

- *Substantial changes in the circumstances under which the project is undertaken;*
- *Substantial increases in the severity of significant impacts previously identified in the (Richmond Ranch) EIR, including but not limited to visual impacts and permanent degradation of previously designated mitigation measures;*
- *Segregation of CEQA review of the Chaboya Ranch project, finding no significant impacts on the MND and then proposing to lower the hill to mitigate visual and other impacts; and*
- *The (Richmond Ranch) EIR is stale and should be set aside.*

Response: As stated in the responses to Comments 1-4, above, the environmental appellant has not provided substantial evidence to indicate that significant changes have occurred to the circumstances under which the project is undertaken, that the grading modifications will result in new significant impacts, or the project will result in an increase in the severity of the aesthetic impact identified in the Richmond Ranch EIR and Chaboya Ranch MND. The Richmond Ranch EIR assumed that significant grading would occur on lands designated as private open space, and the subsequent PD permits which implemented the Richmond Ranch PD Zoning included grading on the portion of the project site closest to Livery Lane and the two single-family parcels at Livery Lane and Running Springs Road. The proposed grading will blend with the natural contours of the site and re-vegetation will be required so no new aesthetic impacts will result.

As stated in the response to Comment 2, above, the CEQA review of the project has not been segmented as the expansion of grading onto Parcel B was not foreseen at the time the Chaboya Ranch MND was approved. Furthermore, the revised grading is not intended as a mitigation measure under CEQA since aesthetics was not identified as a significant impact in the Chaboya Ranch MND.

The environmental appellant provides no justification as to why the Richmond Ranch EIR should not be used besides its age. The Initial Study for the Addendum provides updated information related to aesthetics, biological resources, cultural resources, and geologic hazards, and found that no new significant impacts will result from the project.

In conclusion, the environmental appellant has not provided substantial evidence to support their conclusion that additional environmental review is necessary. Many of the stated concerns relate to the previously approved Chaboya Ranch MND for the Chaboya Ranch PD Zoning, a project that was approved in February 2013. Therefore, for the reasons stated in the responses above, an Addendum is appropriate for the proposed grading modifications.

Permit Appeal

In a letter dated August 22, 2014, the permit appellants objected to the approval of the subject Planned Development Permit Amendments. A copy of the appeal is attached to this memorandum for reference (Attachment 8). The stated reasons for the appeal are listed below in italics, along with staff responses to the reasons for appeal.

1. *The original PDA13-008 project should never have been approved because it failed to comply with the 2040 General Plan.*

Response: The Planned Development Rezoning File PDC11-021 was found in conformance with the San José 2020 General Plan because Policy IP-1.9 of the Envision San José 2040 General Plan allowed planned development zonings to use the 2020 General Plan Land Use Diagram designation for up to 18 months following the adoption of the Envision 2040 General Plan.

2. *The original PD13-008 project should never have been approved because it did not take into consideration the rural scenic corridor that is San Felipe Road.*

Response: The original Planned Development Permit (PD13-008) was approved at a noticed Public Hearing to effectuate an approved Planned Development Rezoning that was found to be consistent with the General Plan pursuant to Policy IP-1.9 of the Envision San José 2040 General Plan as described above. No appeal was filed with respect to that permit approval and the statute of limitations to challenge the approval has long expired. Any allegations about the appropriateness of the original PD permit are untimely and should not be considered.

Without waiving these objections, and for information purposes only, staff notes the following: The original approval acknowledges that the project involved significant grading in some areas, which would ordinarily be discouraged. However, the grading is located away from the public streets and behind or between proposed residences, to minimize potential visual impacts from San Felipe Road, Livery Lane, or adjoining properties. The revisions to the original approval further minimize such impacts by grading to more closely adhere to the natural topography.

3. *Because of the flaws above, the City acted improperly in saying that the original plan had no significant environmental impact on the local viewscape.*

Response: An Initial Study and a Mitigated Negative Declaration (MND) was adopted for the Chaboya Ranch Planned Development Zoning by City Council in February 2013. This MND analyzed the environmental impacts of the Chaboya Ranch project on Parcel A and the Richmond Ranch Complex site. This MND determined that aesthetic impacts of the project would be less than significant since development on the project site would be required to comply with the City's Residential Design Guidelines and the City's Outdoor Lighting Policy. The time to challenge these determinations, administratively or judicially, has long expired.

The current grading modification was determined to not have a significant impact to aesthetics. The proposed grading on Parcel B blends with natural contours of the site as intended by the Richmond Ranch EIR. The total amount of grading will increase compared to the conceptual grading plan in the approved in the original Chaboya Ranch PD Permit. However, the expansion of grading onto Parcel B will result in terrain that more closely conforms to the natural contours of the site, and reduces the number and height of retaining walls on the Chaboya Ranch site.

4. *The Amendments PDA13-008-01 and PDA-021-01 should never have been approved because it did not take into consideration the requirements of the Maintenance District 15 landscaping requirements.*

Response: The City of San José establishes special landscape assessment districts to maintain improvements of a public nature that provide special benefits to the property owners served. These landscape improvements typically include items such as street islands with enhanced landscaping, fountains, plazas, and other decorative features in the public right of way. Since the maintenance of these enhanced facilities directly benefit the individual parcels within the district rather than the City as a whole, the maintenance costs are assessed to the property owners within the Maintenance Assessment District boundaries.

The project site is private property where the development of the new residences will contribute to Maintenance District 15. Maintenance of landscaped areas within Maintenance District 15 include the median islands, frontages (e.g. in front of "The Ranch" at Hassler Parkway), slopes, and regional trails in specified zones. The subject project is within Maintenance District 15's California Oak Creek zone, which includes entrance landscaping at Early Morning Lane and Heartland Way and San Felipe Road (see Figure 2, below). The proposed grading modifications will not occur in areas maintained within Maintenance District 15 and will not interfere with maintenance of the entrance landscape area or the open space trail to the north and west of the proposed grading.

Figure 2: Maintenance District 15 Areas on Project Site



5. *The developer and City acted improperly by not proposing the entire project together.*

The original project proposed by the developer was reviewed and approved on its own merit in February 2013. At that time, it could not be foreseen that there would be revisions to the project at a later date. The revisions to the grading plan as they have been submitted to the Planning Department are to improve the project that has been reviewed and approved as a single project.

General Plan Conformance

The Chaboya Ranch PD Zoning used the 2020 General Plan Land Use Diagram designation of Very Low Density Residential rather than the 2040 General Plan Land Use Diagram of Open Space, Parklands, and Habitat. This is because Policy IP-1.9 of the Envision San José 2040 General Plan allowed planned development zonings to use the 2020 General Plan Land Use Diagram designation for up to 18 months following the adoption of the Envision 2040 General Plan.

The current grading modifications comply with the 2040 General Plan because Parcel A will remain open space after the completion of grading activities. Furthermore, the grading

modifications will comply with Policies CD-9.1 and CD-9.2 of the 2040 General Plan, outlined below:

Policy CD-9.1: Ensure that development within the designated Rural Scenic Corridors is designed to preserve and enhance attractive natural and man-made vistas.

Policy CD-9.2: Preserve the natural character of Rural Scenic Corridors by incorporating mature strands of trees, rock outcroppings, streams, lakes and reservoirs and other such natural features into project designs.

The grading modifications comply with these policies because the grading will blend with the natural contours of the site, will allow for a reduction in the number and size of retaining walls on the Chaboya Ranch site.

Zoning Conformance

The subject site is zoned A(PD), Planned Development Zone, as established by the Chaboya Ranch PD Zoning and the Richmond Ranch PD Zoning. The land use will remain unchanged from that approved under both PD zonings.

EVALUATION AND FOLLOW-UP

If the Council adopts the Addendum and upholds the Planning Director's approval of the Planned Development Permit Amendments, then the Applicant will proceed with the acquisition of the necessary grading permits and complete the development of the Chaboya Ranch project.

POLICY ALTERNATIVES

As discussed in the Analysis section, the Council has two distinct decisions to make:

1. Addendum: The Council can either:
 - a. Approve the use of the Addendum and adopt the related Mitigation Monitoring and Reporting Program (MMRP), or
 - b. Require that additional environmental review be conducted, resulting in a new environmental document that would require approval by the Planning Director prior to approval of the Planned Development Permit Amendments.
2. Planned Development Permit: If the Council adopts the Addendum, then it can consider the two Planned Development Permit Amendments for the Chaboya Ranch Grading Modifications. The Council may:
 - a. Approve the Planned Development Permit Amendments as originally approved by the Planning Director,

- b. Approve the Planned Development Permit Amendments with additional modifications to the conditions, or
- c. Deny the Planned Development Permit Amendments.

For the reasons stated in the Analysis section, staff recommends that the City Council approve the use of the Addendum, adopt the related MMRP, make the required findings under CEQA as set forth in the draft City Council resolution, and approve the Planned Development Permit Amendments as originally approved by the Planning Director.

PUBLIC OUTREACH

Staff followed Council Policy 6-30, the Public Outreach Policy. The property owners and occupants within a 500-foot radius of the project site were sent public hearing notices for the City Council appeal hearing, and for the previous Planning Director's hearing. Copies of the Initial Study (IS), Mitigated Negative Declaration (MND), and the Draft Planned Development Permit Amendments were available on the Planning Division web site prior to the first public hearing and remain available on the web site. This memo and attachments have been posted on the City's web site.

Community Meetings and Applicant Outreach

The applicant held two community meetings on the proposed grading modifications, one on July 21, 2014 and another on August 8, 2014. Planning staff did not attend either of these meetings as they were organized solely by the applicant to present the project and discuss neighbors' concerns. The applicant also engaged in communications directly with individual neighbors to address their concerns.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office and the Department of Public Works.

CEQA

Addendum to the Richmond Ranch Environmental Impact Report (EIR) and the Chaboya Ranch Mitigated Negative Declaration (MND), resolution to be adopted.

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CONCLUSION

The Addendum meets the requirements of CEQA by disclosing the environmental effects of the project. Because the appeal does not raise new environmental issues, nor indicate that environmental impacts are more severe than previously disclosed, there is no need to propose additional mitigation measures to mitigate significant environmental effects. As the project does not include substantial changes to a previously adopted Environmental Impact Report and/or Mitigated Negative Declaration, the project has no new significant environmental effects or a substantial increase in the severity of any previously identified significant effect, and there is no new information involving significant effects since the prior EIR and MND, additional environmental review is not required pursuant to CEQA Guideline section 15162(a). Staff recommends that the City Council uphold the use of the Addendum, adopt the related Mitigation Monitoring and Reporting Program, and approve the Planned Development Permit Amendments.

/s/

HARRY FREITAS, DIRECTOR

Planning, Building and Code Enforcement

For questions please contact Steve Piasecki, Interim Planning Official, at 408-535-7893.

Attachments:

1. Final Director's Determination
2. Addendum to the Richmond Ranch Environmental Impact Report (EIR) and the Chaboya Ranch Mitigated Negative Declaration (MND) and supporting Initial Study
3. Environmental Appeal from Santa Clara Valley Audubon Society
4. Mitigated Negative Declaration and Initial Study for the Chaboya Ranch Project
5. Final Environmental Impact Report for the Richmond Ranch Project
6. Planned Development Permit Amendments PDA94-021-01 and PDA13-008-01
7. Mitigation Monitoring and Reporting
8. Appeal of the Planning Director's Approval of Planned Development Permit Amendments PDA94-021-01 and PDA13-008-01

Due to the length of the attachments, they are available online:

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4. Mitigated Negative Declaration and Initial Study for the Chaboya Ranch Project (485 pages)
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